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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Revision of Part 22 and Part 90)
of the Commission's Rules to)
Facilitate Future Development)
of Paging Systems)

WT Docket No. 96-18

Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

PP Docket No. 93-253

To: The Commission

REPLY COMMENTS OF AIRTOUCH PAGING

AirTouch Paging ("AirTouch"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules,^{1/} hereby replies to comments filed with reference to the above captioned proceeding. The following is respectfully shown:

I. INTRODUCTION

1. AirTouch submitted comments in this proceeding requesting that the Commission refrain from imposing additional construction obligations on licensees who hold nationwide paging licenses. This position received overwhelming support by nearly all parties who filed comments in this proceeding. AirTouch also supported the Commission's proposals to allow flexible geographic partitioning of paging licenses. Many commenters agreed that flexible partitioning rules encourage efficient

^{1/} 47 C.F.R. §§ 1.415, 1.419.

and widespread use of the spectrum and are consistent with the policy of regulatory parity.

2. Finally, AirTouch applauded the Commission for proposing steps to prevent fraudulent activities related to the licensing of paging spectrum. Virtually all commenters support the disclosure oriented approach outlined by the Commission. Several other helpful suggestions were submitted by commenters which should be considered. The approaches proposed by the Commission and supported by commenters, would leave unscrupulous application mills with fewer weapons to commit fraud.

3. Based on the support in the record for the positions advocated by AirTouch, AirTouch respectfully submits that, the Commission should adopt rules consistent with AirTouch's comments and these reply comments.

II. DISCUSSION

A. The Commission Should Decline to Impose Additional Construction Obligations on Nationwide Licensees

4. AirTouch argued, and all but one commenter agreed,^{2/} that no new construction obligations should be imposed on nationwide licensees. Several commenters noted that nationwide licensees were subject to significant build out obligations in order to qualify for the licenses originally, therefore no new obligations

^{2/} Only one commenter addressing this subject took the position that new build out requirements should be imposed on nationwide licensees. Blooston Mordofsky Comments, p. 2. Blooston argues that the auction process places auction participants at a competitive disadvantage, so that additional construction obligations should be imposed in order to impose a similar competitive disadvantage on nationwide licensees. This suggestion is misguided, as it disregards the significant construction obligations with which holders of nationwide licenses already have complied.

are merited.^{3/} PCIA, ProNet and PageNet each agree with AirTouch that the rationale for adopting additional buildout requirements is inapplicable for nationwide paging licenses because significant coverage is already in place, and there is no evidence of spectrum warehousing. Thus, the efficiencies and safeguards associated with proposed construction obligations have already been achieved by the licensees' compliance with the initial construction requirements.^{4/} Also, AirTouch and other commenters demonstrated that there is little public benefit to be had from imposing additional construction obligations on existing nationwide licensees.^{5/}

5. Additional coverage requirements as proposed by the Commission would constitute retroactive application of new standards. Retroactive rule changes are not only unfair and unnecessary, as Metrocall argues, but also would have a potentially devastating economic impact on paging companies which adopted long range business plans and implemented construction programs based upon the existing rules.^{6/} In addition, Metrocall, PageNet and PageMart II each noted that retroactive standards are not justifiable and are contrary to legal precedent.^{7/} Both ProNet and Metrocall accurately argue that retroactive imposition of standards is a

^{3/} Metrocall Comments. pp. 3, 4; PageNet Comments p. 4; ProNet Comments, p. 4.

^{4/} See PCIA Comments at 5; ProNet Comments at 5, 6; PageNet Comments at 4.

^{5/} AirTouch Comments at p. 3; Metrocall comments at pp. 8-9; ProNet Comments at p. 4.

^{6/} See Metrocall Comments at p. 7; see AirTouch Comments at p. 2; PageNet Comments at pp. 3, 8; PCIA Comments at p. 5.

^{7/} Metrocall Comments at p.7, citing McElroy Electronics Corporation v. FCC, 990 F.2d 1351 (D.C.Cir. 1993); PageMart II Comments at p. 3. See also, PageNet Comments at pp. 5-7 (arguing that any further regulatory requirements imposed on nationwide licensees by the Commission could be classified as a "taking" under the Fifth Amendment).

modification of the license which could trigger the procedural protections provided by Section 316^{8/} of the Communications Act of 1934, as amended.^{9/}

6. Based upon the support in the record for AirTouch's argument that additional construction obligations should not be imposed on nationwide licensees, the Commission must not impose those additional burdens on nationwide licensees.

B. The Commission Should Adopt Flexible Partitioning Rules

7. AirTouch supports flexible partitioning rules because they promote efficient use of the spectrum and regulatory parity. A majority of the commenters also support the Commission's proposal to adopt flexible partitioning rules.^{10/} PCIA, PageMart II, Metrocall and ProNet agree with AirTouch that nationwide paging licenses should be afforded the same treatment as MTA or EA licenses with respect to partitioning rules since the goals achieved by permitting flexible partitioning are equally applicable to all these types of licenses.^{11/}

^{8/} 47 U.S.C. § 316(a).

^{9/} ProNet Comments at p. 6; Metrocall Comments at p. 6.

^{10/} One commenter argued for mandatory, costless partitioning rules for Basic Exchange Telephone Radio Service providers as a method of supporting Universal Service reform goals. Comments of Nucla-Naturita Telephone passim. However, this proposal would undermine the efficiency of marketplace valuation in partitioning transactions. Further, this proposal would be more appropriately addressed in the Universal Service Fund reform proceeding already underway.

^{11/} PageNet commented that partitioning and disaggregation should only be allowed through waiver and for good cause shown, since such rules may contaminate the auction process and contribute to fraud. PageNet Comments at pp. 11-12. However, the concerns expressed by PageNet are not unique to the adoption of disaggregation and partitioning rules in the paging industry. The Commission has sufficient alternative methods to guard against these problems, accordingly PageNet's suggestion should be rejected. For example, by imposing construction obligations on all parties involved in partitioning and disaggregation arrangements, and requiring all parties to
(continued...)

8. Each of the commenters expressed concern that potential sham transactions masked as valid partitioning deals may allow license holders to circumvent the coverage requirements. AirTouch has previously addressed this concern in both this docket as well as in Comments filed with the Commission in connection with pending revisions to the generic competitive bidding rules docket. AirTouch pointed out, and ProNet agreed, that the substantial service alternative to the specific construction benchmarks invites just this type of evasion. Several parties have urged the Commission to reject the substantial service alternative in favor of concrete building requirements. In addition, requiring both the partitioner and the partitionee to guarantee the financial obligation is an additional safeguard against sham transactions.^{12/}

C. The Commission Should Adopt Disclosure Measures to Combat Fraud

9. Virtually all commenters supported the Commission's proposal to increase dissemination of information throughout the licensing process in order to combat fraud. In addition to supporting the revision of FCC Form 600, commenters submitted other helpful suggestions which warrant consideration.^{13/} As PCIA stated,

^{11/}(...continued)

such arrangements to become guarantors with respect to any financial obligation of the licensee which is outstanding with respect to the particular market area.

^{12/} AirTouch Comments at pp. 5, 6; PCIA Comments at p. 7; PageMart II Comments at p. 11. Some commenters contend that only the original licensee should be required to guaranty satisfaction of an outstanding financial obligation. MetroCall Comments at p. 22, PageMart II at p. 11. AirTouch respectfully submits that, where waiver of the rule is warranted based upon fairness, parties can seek such a waiver.

^{13/} For example, the FTC suggested requiring application preparers to identify themselves on an application and certify that information regarding the licensing process has been disclosed to the applicant, and requiring bidding agents to disclose the real party in interest to an application so that pertinent information could be forwarded directly to those parties. FTC Comments at pp. 13, 15.

clarity and consistency of rulemaking will aid the information distribution activities the Commission encouraged. AirTouch supports the licensing suggestions PCIA identified which would allow the Commission to focus on serious construction issues without unnecessary paperwork.^{14/}

III. CONCLUSION

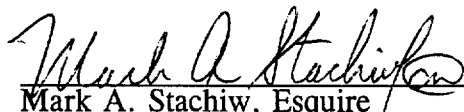
10. AirTouch has demonstrated that there is ample support in the record for the adoption of rules supported in its comments and reply comments.

WHEREFORE, for the foregoing reasons, AirTouch respectfully requests that the Commission adopt rules consistent with the proposals set forth herein.

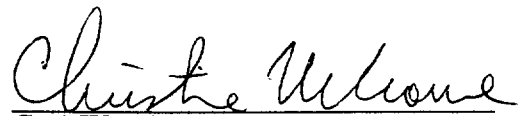
Respectfully submitted,

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May 1, 1997

^{14/} PCIA Comments pp. 10, 13, 14. In particular, refocusing the use and certification procedures of FCC Form 800A is an appropriate way to monitor fraudulent activities.

CERTIFICATE OF SERVICE

I, Sharon L. Henry, a secretary with the law firm of Paul, Hastings, Janofsky & Walker LLP, hereby certify that a copy of the foregoing Reply Comments of AirTouch Paging, was sent via first class U.S. mail, postage prepaid, or hand-delivered on this 1st day of May 1997, to the following:

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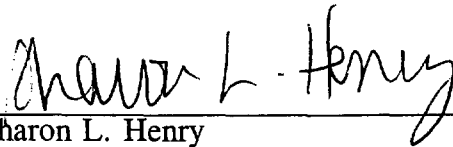
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